SAM P. JONES

IBLA 83-178 Decided February 17, 1983

An appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, ES 21304.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

   Lands formerly included in a competitive oil and gas lease which expired at the end of its primary or extended term, and which were then classified as not within the boundaries of a known geologic structure, are subject to the filing of noncompetitive lease applications only in accordance with the simultaneous filing procedures in 43 CFR Subpart 3112. An over-the-counter offer for an oil and gas lease of such lands must be rejected.

2. Regulations: Force and Effect as Law -- Regulations: Validity

   The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Sam P. Jones appeals a decision of the Eastern States Office, Bureau of Land Management (BLM), dated August 24, 1982, rejecting noncompetitive over-the-counter oil and gas lease offer, ES 21304, because the lands requested

are within a terminated oil and gas lease and available for leasing only in accordance with the simultaneous filing procedures, 43 CFR Subpart 3112.

Appellant filed on May 1, 1979, an over-the-counter noncompetitive oil and gas lease offer for W 1/2 SW 1/4, sec. 32 and SE 1/4 SE 1/4, sec. 33, T. 4 N., R. 1 E., Washington meridian, Wilkinson County, Mississippi. BLM's records show that the subject lands were included in competitive leases, BLM-A 073085 and BLM-A 073086, which both expired October 31, 1968. In a Geological Survey memorandum dated October 6, 1970, these lands were deleted from the undefined known geological structure (KGS) (which had been the basis for their inclusion in the expired competitive lease), and were described as available for noncompetitive leasing. BLM rejected all subsequent over-the-counter noncompetitive oil and gas lease offers for the lands pursuant to 43 CFR 3112.1-1. The subject lands have not yet been listed by BLM under the simultaneous filing procedures.

In his statement of reasons, appellant argues that Subpart 3112 does not apply to lands formerly leased competitively. Appellant urges that the character of lands deleted from a KGS takes them outside of the scope and purpose of the regulations subjecting formerly leased lands to simultaneous filing procedures.

[1] In administering the Mineral Leasing Act, the Secretary exercises a discretionary, rather than a ministerial function. Hence, a provision in the Act authorizes the Secretary "to prescribe necessary and proper rules and regulations" to accomplish its purposes. 30 U.S.C. § 189 (1976). This, of course, does not mean that the Secretary is permitted to lease lands not within any KGS of a producing oil and gas field to one other than "the first qualified person making application." See Udall v. Tallman, 380 U.S. 1 (1965); 30 U.S.C. § 226(c) (1976).

43 CFR Subpart 3112 is the procedure promulgated by the Secretary for determining through a public drawing the first-qualified applicant for certain noncompetitive leases. Pursuant to 43 CFR 3112.1-1, all lands covered by leases which expire by operation of law at the end of their primary or extended terms shall be subject to filing of new lease applications only in accordance with simultaneous filing procedures. The regulation provides for posting descriptions of expired lease lands in order to assure public notice and participation in reissuing those leases. It is well established that BLM must reject an over-the-counter offer for an oil and gas lease of lands formerly included in a lease which expired by operation of law, since under 3112.1-1, such land is subject to leasing only under the simultaneous filing system. Paiute Oil and Mining Corp., 67 IBLA 17 (1982); Todd Welch, 66 IBLA 350 (1982).

The issue presented here is whether 43 CFR 3112.1-1 applies to lands formerly included in competitive oil and gas leases that are now available

for noncompetitive leasing. Appellant accepts the general rule set forth in 3112.1-1, but argues that this situation presents an exception to that rule. He contends that, through reasonable interpretation, the regulation does not apply to lands which were included in a competitive lease.

The language of the regulation is clear. 1/ Under 3112.1-1, all lands which are not within the KGS of a producing oil and gas field and were included in relinquished, terminated, or expired leases are subject to further leasing only under the simultaneous filing system. Edna L. Williams, 59 IBLA 196 (1981). Nothing would suggest that only certain types of preceding leases will come under this rule, but, as the regulation states, all lands held within previous leases are subject to this subpart.

Appellant argues that these lands have become too speculative for oil and gas to merit using the simultaneous filing system. However, the fact that appellant and others have filed offers for these lands implies that they are deemed by some to have significant likelihood of containing oil and gas deposits. If it is later found that not enough persons hold that opinion, and the land goes unleased under the simultaneous filing procedure, it may be leased pursuant to an over-the-counter offer. See 43 CFR 3112.7; Lowell J. Simons, 66 IBLA 338 (1982). The preamble to the proposed adoption of the simultaneous filing procedures, noted by appellant, stated: "The purpose of the amendments is to provide a uniform and orderly method for the filing of new offers to lease on lands in expired, cancelled, relinquished, or terminated leases." 24 FR 949 (Feb. 7, 1959). Thus, Subpart 3112 is the procedure promulgated by the Secretary to render order and uniformity to situations of this nature. The fact that lands have been unsuccessfully explored under a competitive lease does not distinguish them from lands which have been unsuccessfully explored under a noncompetitive lease.

[2] The Board of Land Appeals has no authority to treat as insignificant or to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department. Enserch Exploration, Inc., 70 IBLA 25 (1983); Altex Oil Corp., 61 IBLA 270 (1982). 2/ Where the rule exists as a Departmental regulation, we cannot depart from its clearly expressed meaning, and we must apply it to appellant's situation.

1/ 43 CFR 3112.1-1 reads in part:

"All lands which are not within a known geological structure of a producing oil or gas field and are covered by canceled or relinquished leases, leases which automatically terminate for non-payment of rental pursuant to 30 U.S.C. 188, or leases which expire by operation of law at the end of their primary or extended terms are subject to leasing only in accordance with this subpart."

2/ Appeal pending, Altex Oil Corp. v. Watt, No. 82-0424A (D. Utah filed Apr. 30, 1982).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge